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*City of Annapolis*

## DEPARTMENT OF PLANNING AND ZONING

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### Director of Planning and Zoning Findings

#### Density Calculations in a Special Mixed Planned Development in a B2, Community Shopping District in Conjunction with PD2016-002

Prior to the submission of the property owners' application (Application) to the Department of Planning Zoning (Department) for PD2016-002, "The Lofts at Eastport Landing" (Project) on September 16, 2016, there was correspondence between the property owners' representative and the Department staff. At the conclusion of those meetings and correspondence, there was an initial understanding for determining how residential density would be calculated for the Project as a Special Mixed Planned Development in a B2, Community Shopping District.

Since that time when the application for the Project was submitted to the Department, there have been subsequent questions and methodologies proposed on how the density should be calculated for a Special Mixed Development in the B2, Community Shopping District. In an effort to understand all perspectives on calculating the density for this type of development in this zoning classification, the Department Director held a Public Meeting on June 8, 2017 to hear presentations on this particular issue. All interested parties were invited to present their materials on density calculations for a Special Mixed Development in the B2, Community Shopping District.

In these deliberations, several salient discussion points appear to surface which conflict with the application and the methodology proposed at the time of application. In these opinions several key issues were identified for further consideration for the Department Director:

- The election to submit an application for a Special Mixed Planned Development per Chapter 21.24<sup>1</sup> in the City Zoning Code would forgo any "by right" uses on the property, thereby subjecting the proposal to only the residential standards outlined in the Bulk and Density Standards for Special Mixed Planned Developments outlined in Section 21.24.050 B.2.
- The gross residential development area is the approximately 2 acres in which the residential units are located and that Section 21.20.020 limits the use of Special Mixed Planned Development to 30% of this area. Therefore, the calculation of the densities should be based on 30,953 square feet (103,177 multiplied by .3).
- The methodology in calculating the density neglected to distinguish the difference between "gross development area" and the "gross residential development area". The distinction in this analysis is that the calculation should not consider the entire property (6.75 acres) in determining the density. Therefore, the gross residential development area should be approximately the 2 acres in which the residential units are located on the property.

- In the analysis of defining the difference between "gross development area" and the "gross residential area," the methodology utilized should have deducted that portion of the property that is attributable to the non-residential uses on the lot including the portion of the lot dedicated to parking, landscaping and/or stormwater management facilities that support the non-residential uses.
- The application states that 103,177 square feet of gross floor area is for residential uses therefore this square footage should be utilized to calculate the gross residential area. The application also states that there is 11,000 square feet of dedicated commercial and retail uses within this 103,177 square feet therefore the density calculation should be based on 92,177 square feet.

Based on the information outlined above, the allowable number of units could range anywhere from 18 units to 61 units, rather than the 127 units proposed in the Application's methodology. In assessing each of the viewpoints described above, a review of the City Code (including the City Zoning Code) and the sum of its parts, I offer the following explanations and findings as Department Director:

The Use Table in Chapter 21.48 lists not only the types of uses that are permitted by zoning classification, it also includes types of development that are permitted by zoning classification. "Planned Developments" are a type of development that allows a range of uses that would not otherwise be permitted within a zoning classification. However, these additional uses are limited. Special Mixed Planned Developments are permitted in the B2 zoning district. While Chapter 21.48 does not specifically list which uses are permitted in a Planned Development that would otherwise not be allowed, "Planned Development Uses" are defined in Chapter 21.72. Based on this definition in Chapter 21.72, there are permitted uses by right to be utilized within a Special Mixed Planned Development and there are uses that are limited to 30% of the gross floor area, as noted in Section 21.24.020 C.2. These limited uses are referred to as "Planned Development Uses."

The Use Table in Chapter 21.48 indicates that "Dwellings above Nonresidential Uses," as well as a multitude of commercial and retail uses, are permitted by right in the B2 zoning district, and as such Dwellings above Nonresidential Uses are not considered a Planned Development Use in a Special Mixed Planned Development. Conversely, Multi-family Dwellings are not permitted in the B2 district, but are permitted as a Planned Development Use and therefore this use would be subject to the 30% limitation outlined in Section 21.24.020 C.2.

In review of the Application for the Project, the Application included drawings and plans for the entire site of 6.75 acres or 293,897 square feet. Fees for Planned Developments are based on a set fee plus a per acre fee. The fee submitted for the Project was based on the entire site of 6.75 acres. The submission requirements of the Application included landscaping plans, stormwater management plans, parking analysis, Critical Area analysis and traffic impacts based on the entire site of the Project. In an evaluation of those Application documents, it is noted that the site was analyzed for the entire site as it relates to all of the land uses of the Project. Specifically the landscaping requirements for shopping centers were identified, the parking analysis included requirements for shopping centers and residential uses, the stormwater management plans establish requirements based on the entire site of 293,897 square feet. Finally the traffic impact study evaluated the adjacent street traffic impacts based on the redistribution of all the existing and proposed commercial uses as well as the proposed residential uses.

One must also consider that density does not dictate the location of the uses on the property. It is the bulk and design regulations that set the parameters for location of structures and uses. Many residential parcels and/or

lots have a given density but cannot achieve those densities due to the lot size and other constraints. In establishing any density or floor area ratio, the process begins with the establishment of the entire property. This is illustrated in the definitions of Density and Floor Area ratios in Chapter 21.72. In the assessment of use, bulk regulation or design criteria, the basis of establishing these standards begin with the Zoning Lot, as defined in Chapter 21.72. For instance the use of a single family detached unit is determined by location of only one unit on the Zoning Lot. If two or more units were proposed on a single Zoning Lot, then the use would be defined differently (i.e. multi-family etc.). Similarly, any setback or yard as utilized in the Bulk Regulations is determined by the property line of the Zoning Lot, and landscaped bufferyards are established between the use of the property and distance from the property line.

In review of the purposes of Planned Developments generally, which establishes legislative intent, the integration of uses and design were clearly the basis for these types of developments. Section 21.24.010 establishes the purposes of Planned Developments as follows:

- To allow greater flexibility in order to encourage more creative design for the development of land than is generally possible under conventional zoning district regulations.
- To promote orderly and thorough planning and review procedures that will result in quality design and counteract the negative effects of monotonous design.
- To allow the grouping of buildings and a mix of land uses with an integrated design and a coordinated physical plan.
- To promote development in a manner that protects significant natural resources and integrates natural open spaces into the design of a development project.
- To encourage a design that takes into account the natural characteristics of the site in the placement of structures.
- To promote development that is consistent with the goals of the Comprehensive Plan.

Other than the Application, the Department has only reviewed one other Special Mixed Planned Development since the 2005 changes to the code regarding Planned Developments. All other Planned Development applications since then were Residential Planned Developments. In reviewing applications associated with any type of residential development, the Department has based the density calculations on the entire Zoning Lot. For example, in the application of PD2014-001 (a previous Special Mixed Planned Development known as the Lofts at Eastport), the density calculations were based on the entire Zoning Lot.

Further, Planned Developments are a type of development that has both permitted uses and Planned Development Uses. The election to utilize the Planned Development provision in the City Zoning Code does not eliminate the right to use the land for other uses permitted in that zoning district. The application of the 30% limitation in Section 21.24.020.C.2 is only applied to the Planned Development Uses, so that for purposes of the Application, only the multi-family units are subject to the 30% limitation. "Multi-family Dwelling Units" is the only use that would not otherwise be permitted on this zoning lot if the Project were not a Planned Development.

Uses permitted "by right" in B2 are still considered "by right" even if the Project is developed as a Planned Development.

Moving on to the actual density calculations, it is important to differentiate between "floor area" defined in Chapter 21.72, "development area" defined in Section 21.24.050 B. Therefore, the area to be determined for a density calculation has to be calculated based on more than just the floor area of the site dedicated to residential development. The Application stipulates that the residential gross floor area is 103,177 square feet and that the commercial and retail uses have a gross floor area of approximately 74,498 square feet. The gross area of the site is 293,897 square feet according to the Application. Since the sum of all Project floor areas (residential and commercial) does not equate to the total site area, the 103,177 square feet of residential floor area cannot constitute a "gross residential development area".

There is also a pattern for integrating different land uses and creating a mix of uses through the sharing of provisions in each zoning classification, as established by a review of the City Code requirements for the many zoning classifications. Parking standards allow for alternative analysis; off-site mitigation for a development does not differentiate between the land uses for stormwater, landscaping, trees, public facility improvements; and so on. In fact, many of the provisions in Title 21 of the City Code promote, encourage and provide incentives to create a mixture of land uses and associated ancillary amenities.

Section 21.24.050 B.2 further differentiates between "Gross Development Area" and "Gross Residential Development Area". Gross Development Area is defined in that Section, but there is no definition of "gross residential development area" in the City Code. There is, however, a clear distinction between Gross Development Area and Gross Residential Development Area in Sections 21.24.050 B.1 and B.2, which indicates an intent to refer to two different types of areas. Therefore, it is left to the Department to establish a net area for calculating residential density for Special Mixed and Business Planned Developments. The integration of land uses and the ancillary regulatory requirements (as discussed above) make it unfeasible to establish a delineated area for the different type of uses (i.e. residential vs. commercial). Therefore, a methodology to determine which area of stormwater management, buffer yards, landscaping and so on dedicated to either the residential uses or commercial uses on the property cannot be established. Even if a methodology was possible (which I contend is not), any attempt to delineate would be contrary not only to the intent of Planned Developments, but unworkable based on the way the regulatory framework is applied to the site as a whole.

As such, to establish the Gross Residential Development Area, those areas solely dedicated to commercial development would have to be subtracted from the total area to establish the density of the Project. The only method of determining the sole use of commercial activity is to base the calculation on the square footage of the building and parking requirements dedicated to commercial uses in the case of PD2016-002.

In this case, the Project includes approximately 72,000 square feet of commercial floor space. The City Code further establishes a standard per parking space of 18' by 8.5' and minimum drive aisle per parking space to be applied to the Project. Therefore, the Application needs to be revised to include both the approximately 72,000 square feet of commercial floor space and the square footage for the parking area dedicated to commercial square footage. Based on the current Application plan, this equates to approximately an additional 60,000 square feet of commercial area for the parking area needs to be subtracted from the total area to establish the Gross Residential Development Area for the Project.

It should be further noted that there are a number of other regulations that have not been resolved that impact the ability to meet density and floor area ratios on any given property. Issues of bulk and community character will be addressed during Section 21.24.090 "Planned Development Review Criteria and Findings", which specifically states:

*The planned development is compatible with the character of the surrounding neighborhood and consistent with the Comprehensive Plan and the purposes of planned developments.*

*The proposed locations of buildings, structures, open spaces, landscape elements, and pedestrian and vehicular circulation systems are adequate, safe, and efficient and designed to minimize any adverse impact upon the surrounding area.*

*The planned development will promote high quality design and will not result in greater adverse impacts to the surrounding area compared to the development that may otherwise be permitted pursuant to the Zoning Code if a planned development were not approved.*

*The planned development complies with the planned development use standards and bulk and density standards.*

*The planned development complies with the Site Design Plan Review criteria provided in Section 21.22.080.*

*The planned development plan includes adequate provision of public facilities and the proposed infrastructure, utilities and all other proposed facilities are adequate to serve the planned development and adequately interconnect with existing public facilities.*

Department staff have also noted that there are a number of outstanding parking issues that needed to be addressed for the Project, including that the parking analysis needs to reflect the correct "net parking square footage percentage"; the parking garage needs to fully support the residential uses for the development; the parking lot may need additional landscaped islands and buffers to meet the landscaping requirements and best management practices for stormwater; and the overall height, scale and massing of the Project needs to reflect the character of the community specifically as it relates to Chesapeake Avenue. These are examples of other regulatory requirements that Department staff have noted that may further impact bulk and density standards.

 7/14/17

C. Pete Gutwald, Director

Planning and Zoning

#### Notice

Any appeals of a decision of the Planning and Zoning Director must be made to the Board of Appeals in conformance with the provisions of Chapter 21.30.

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<sup>1</sup> All "Chapter" and "Section" references are to the Code of the City of Annapolis, as amended, as of the date of these Findings.